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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/708,139  | 02/08/2004  | Pedro Baquero        | 011-310             | 2138             |
| 29569   | 7590        | 08/11/2004           | EXAMINER            |                  |
| JEFFREY FURR<br>253 N. MAIN STREET<br>JOHNSTOWN, OH 43031 |             |                      | CHIU, RALEIGH W     |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 3711                |                  |

DATE MAILED: 08/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| <b>Office Action Summary</b> | <b>Application No.</b>          | <b>Applicant(s)</b>     |  |
|------------------------------|---------------------------------|-------------------------|--|
|                              | 10/708,139                      | BAQUERO, PEDRO          |  |
|                              | <b>Examiner</b><br>Raleigh Chiu | <b>Art Unit</b><br>3711 |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on \_\_\_\_\_.  
2a)  This action is **FINAL**.                    2b)  This action is non-final.  
3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-20 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1,5,7-12,14-16,18 and 20 is/are rejected.

7)  Claim(s) 2-4,6,13,17 and 19 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_ .

**DETAILED ACTION**

***Oath/Declaration***

1. The citizenship of the inventor is unclear. The Declaration indicates a Canadian citizenship; the Application Data Sheet indicates a United States citizenship. Clarification is required.

***Claim Objections***

2. The twentieth claim must be numbered.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 7-10, 14-16 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 7 and 20, the recited holder is not a part of the projector so the term "device" is no longer appropriate;

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the preamble of the claims should indicate that they are combination claims (see claim 11).

Claims 8-10 are rejected because they depend from a rejected claim 7.

Regarding claims 14-16, it is not clear if a device or a game is being claimed.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 1, 5, 7, 10-12, 14, 16 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Number 2,317,289 (McDonald).

Regarding claims 1, 10-12, Figure 1 of McDonald shows a device including the recited rod 21, pivoting means 24 and club 23,25 and projectile 29.

Regarding claims 5 and 16, Figure 3 shows a pulley 34 corresponding to the recited caster.

Regarding claim 14, Figure 3 also shows a collar 31 corresponding to the recited hub.

Regarding claim 18, table 11 holds projectile 29.

8. Claims 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over McDonald as applied above.

Regarding claim 15, it would have been an obvious matter of design choice to modify the McDonald reference by having a press fit hub attachment, since applicant has not disclosed that having this fitting solves any stated problem or is for any particular purpose and it appears that the pivoting means would perform equally well with any pivot connecting.

***Allowable Subject Matter***

9. Claims 2-4, 6, 13, 17 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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10. Claims 8 and 9 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

11. Claim 20 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raleigh Chiu whose telephone number is (703) 308-2247. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich, can be reached on (703) 308-1513.

The fax number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Raleigh W. Chiu  
Primary Examiner  
Technology Center 3700

RWC:dei:feif  
5 August 2004